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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/008,947	01/20/1998	RANDELL L. MILLS	911322US	6830

7590 11/13/2006

FARKAS & MANELLI
2000 M STREET, N.W.
7TH FLOOR
WASHINGTON, DC 200363307

EXAMINER

KALAFUT, STEPHEN J

ART UNIT	PAPER NUMBER
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1745

DATE MAILED: 11/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

8

Office Action Summary	Application No.	Applicant(s)	
	09/008,947	MILLS, RANDELL L.	
	Examiner	Art Unit	
	Stephen J. Kalafut	1745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-6 and 10-59 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-6 and 10-59 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>10 August 2006</u> . | 6) <input type="checkbox"/> Other: _____ |

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A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10 August 2006 has been entered.

Claims 1-2, 4-6 and 10-59, for reasons of record, are rejected under 35 U.S.C. 101 because the claimed invention lacks patentable utility. See paper no. 17, paragraph no. 3.

Claims 1-2, 4-6 and 10-59, for reasons of record, are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claims contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. See paper no. 17, paragraph no. 4.

Applicant's arguments filed 10 August 2006 have been fully considered but they are not persuasive.

Applicant argues (page 1) that he has submitted with his response "new, non-cumulative scientific evidence" in support of his theory. The response submitted on 10 August 2006 includes eight articles of evidence, including attachments 74, 80, 94, 102, 106 and 113, each of which is already of record.

Applicant argues (page 4), that the “Committee does not even mention, let alone consider, most of the certified experimental evidence” that he has submitted. Contrary to this assertion, the reasons that the evidence has not been persuasive were explained in the Office actions of paper nos. 20040405 and 20050714, and the Appendices attached thereto. Failure to be persuaded is not the same thing as a refusal to consider. Applicant alleges that the “Secret Committee” has dismissed his evidence (page 22), yet faults what he considers “erroneous arguments” in the Appendices of consultary examiner Dr. Souw (page 23), which themselves are a consideration of evidence submitted by applicant.

Applicant repeats his previous argument (page 23) that the “Committee” has nitpicked on “theoretical grounds” and not found any “true fault with any of the data on legitimate scientific grounds”, which falsely assumes that theoretical grounds and scientific grounds are somehow mutually exclusive. The previous Appendices have given both theoretical and experimental reasons for finding fault with applicant’s data. For example, the Appendix to paper no. 20050714 is divided into “Experimental” and “Theoretical” parts.

Applicant argues (page 25) that “the level of support (or acceptance) in the scientific community, not the proper standard for ascertaining whether an applicant has satisfied the enablement or utility requirements of Sections 112 and 101”. The level of support in scientific community is not alleged to be a standard under §101 and §112 *per se*, but merely a reason why the examiner does not consider applicant to have met the standards of these sections, such as enabling an ordinarily skilled artisan to make and use the invention. A disclosure is evaluated for what it teaches to those skilled in the art, such skill evaluated in light of the scientific

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knowledge pertinent to that art. The opinions of the scientific community form part of this background knowledge.

Once again applicant faults the “Committee” for relying on Krieg (page 28), doing so because the “Committee” was “feeling the pressure to back up its claims”. Krieg was not cited because of any “pressure”, but to address a specific argument raised by applicant, that the “Committee” has failed to find any physical law the applicant has violated. Krieg makes four basic points. First, Krieg states that total energy, identified by the variable “E”, is the sum of kinetic and potential energy. Second, he uses the laws of electricity and magnetism to establish the potential energy of the proton-electron system. Third, he used the uncertainty principle to get an order of magnitude estimate for the momentum of an electron for a given orbit, which orbit is identified by its radius as “r”. Fourth, he used calculus find the minimum value of “r” by taking the derivative of “E” and setting it equal to zero. Nowhere in applicant’s arguments about Krieg are any of these points disputed.

Applicant argues (page 30) that in the Appendix to the Office action of 24 August 2004, Dr. Souw stated that “[t]he PTO’s view is not at all that the existence of lower-energy hydrogen were [sic] impossible”, which would mean that “lower energy states cannot be in violation of any physical law”, and that the “Committee” has taken a contrary position, taking the “ground state of an electron of a hydrogen atom” to be a physical law that applicant has violated. This statement concerning the position of the “Committee” would contradict applicant’s assertion (page 24), that the “Committee” has failed to identify any laws that have been violated. However, in stating Dr. Souw’s position, applicant omits part of Dr. Souw’s statement, where he states that “(a) Applicant’s invention is not supported by any experimental fact or evidence, and

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(b) the underlying theory (i.e., GUT/CQM) fails to support the invention, because it contains too many flaws”, the theory that Dr. Souw refers alleging the existence of lower-energy hydrogen. Since the theory behind lower-energy hydrogen is flawed (according to Dr. Souw), their existence is not supported, and the physical law concerning the “ground state” of hydrogen atoms remains accepted by the examiner.

Applicant argues (page 39) that an “*APS News Online Bulletin*, dated August/September 2002, suggests that Dr. [Robert] Park is maintaining his questionable PTO contacts, apparently with the agency's blessing”, thus having knowledge of Patent applications filed during 2002, and not merely of applicant's applications at various times during the year 2000, and further states that the subject matter of such applications “is supposedly kept confidential”. This ignores the fact the Office has been publishing Patent applications under the Pre-Grant Publications program, as early as July 2001, over a year before the date of the above-mentioned *APS News Online Bulletin*. As before, instead of a “Deep Throat” or other improper contact, the *Bulletin* was based on information that was publicly available.

Applicant argues (page 134) that the “Committee” contradicts itself in the statement in the Office action of 09 September 2005, in serial no. 09/362,693, and in the Advisory action of 12 December 2005, in the present application, “which do not necessarily require the use of hydrinos, while applicant's invention (in the present application) deal with methods of making compounds that include hydrinos”. Applicant takes this as an admission that the committee has “been forced to recognize the operability of BlackLight's novel hydrogen technology based on the required use of hydrinos to distinguish it from Dr. Souw's work”. This statement was, and is, in no way whatsoever intended to be taken as an admission that the present examiner, or anyone

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consulted thereby, considers applicant's invention to be operable. The statement was only intended to show how Dr. Souw's work is seen as distinct from, and thus not conflicting with applicant's invention, without regard to its operability or patentability.

Applicant argues (pages 140 and 156) that Dr. Souw has relied on a fraud made by Dr. Andreas Rathke, where Dr. Rathke changes mathematical signs in applicant's equations (1) and (9). Since the articles which Dr. Rathke cites (nos. 24 and 25, on page 8 of his article) are not of record, whether Dr. Rathke has done what applicant alleges cannot be determined. However, it is noted that equation (1), on page 2 of the Rathke article appears identical to Equation (2) in applicant's attachment 58, except that applicant uses the coordinates "r", "theta" and "phi" within the parentheses, along with "t", whereas Rathke uses only "x" and "t". No signs, such as plus or minus, appear to have been changed.

Applicant argues (page 153) that the "Committee" provides no support for concluding, in the Advisory Action 02 February 2006, that attachment 113 and 114 speculate hydrino formation as an explanation for data not necessarily caused thereby. The Appendix to paper no. 20040405, on page 5 thereof, offers several different explanations alternative explanations for the Balmer line broadening observed by applicant, and thus support for the conclusion of the "Committee".

Applicant argues (page 153) that the data of Cvetanovic *et al.* support his RTM. As stated in the Advisory Action 02 February 2006, Cvetanovic *et al.* list the precise data which, according to them, cannot be explained by RTM. To summarize, these include "different line shapes recorded end-on and side-on", the "large contribution" of hydrogen atoms having energies two orders of magnitude larger than electron temperature, "the increase in profile width with the decrease of discharge pressure", "spatial inhomogeneity of the excessive broadening"

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and “throughout the negative glow, the intensity of the excessively broadened part of line profile decreases exponentially”. Moreover, as pointed out in paper no. 20041114, data equivalent to that shown by applicant may be explained by other conventionally known mechanisms, as shown by Luggenhölscher *et al.*, cited in the PTO-892 attached thereto.

Applicant argues (page 155) that the text of Cvetanovic *et al.* “contains some clear misrepresentations”, specifically that while the broadening of Figure 4c appears to be larger than that of Figures 4a and 4b, because Figure 4c was “printed in a larger format”, but is actually “virtually identical” to the broadening shown in figures 4a and 4b. Figure 4c is on a somewhat smaller scale than the other two figures. However, the data shown in figure 4c shows more asymmetry than seen in the other two, as well as a profile shape that deviates more from convex.

Applicant argues that Barth (cited in the IDS of 17 January 2006) is mistaken when stating that applicant has overlooked electromagnetic attraction between the nucleus and the electron, since this attraction is taken into account by the force balance equation (1.232). Barth is specifically referring to the wave equation, which is commonly used to represent traveling waves such as sound waves, and is used by applicant to describe the electron’s “charge density function”, as not containing any term for the electromagnetic attraction.

Regarding the articles cited in the IDS of 10 August 2006, only attachments 115 and 116 are not already of record. Both attachments would fall into category (4) of paper no. 20040405, as speculating hydrino formation as an explanation for experimental data not necessarily caused thereby, as in Balmer line broadening, as well as category (1), as having not been peer-reviewed.

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This is a Request for Continued Examination of applicant's earlier Application No. 09/008,947. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Kalafut whose telephone number is 571-272-1286. The examiner can normally be reached on Mon-Fri 8:00 am-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

sjk


STEPHEN KALAFUT
PRIMARY EXAMINER
GROUP 1700